

Letter of Findings: 03-20120401
Withholding Tax
For the Years 2008, 2009, and 2010

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ISSUE

I. Failure to Withhold – County Withholding Tax.

Authority: IC § 6-3-4-8(a); [45 IAC 3.1-1-97](#).

Taxpayer argues that, as an employer, it is not required to pay withholding tax when it can purportedly establish that its employees reported and paid the proper amount of tax on their individual tax returns.

STATEMENT OF FACTS

Taxpayer operates an Indiana franchise business. The Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and withholding tax returns. Taxpayer withheld Indiana state tax from its employees but failed to withhold county income taxes. The Department assessed Taxpayer the county tax. Taxpayer disagreed with the assessment and filed a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Failure to Withhold – County Withholding Tax.

DISCUSSION

The Department assessed Taxpayer for county income tax it failed to withhold from its employees' paychecks. The Department determined the amount of tax by multiplying the employees' "gross wages... by the appropriate county rate to arrive at the audit assessment."

Taxpayer disagrees with the amount of the assessment and asks for a "reduction in the liability... by the actual amount paid in the employees' respective tax returns to the State of Indiana attributable to the employees' given county."

Taxpayer asserts that if it were to pay the tax, "[T]he state of Indiana is effectively receiving twice the amount of actual county taxes due from its employees...."

The Department's regulation found at [45 IAC 3.1-1-97](#) states in relevant part:

Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax. (Emphasis added).

The regulation derives from the statutory provision found at IC § 6-3-4-8 which states in part as follows:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3-5](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3-5](#) the employer is required to withhold. (Emphasis added).

Taxpayer suggests that it should be relieved of its responsibility for withholding county income tax if it can demonstrate that individual employees did in fact report and pay the tax. However, there is nothing in Indiana law which allows such an exception. Under Indiana law, an employer is required to withhold taxes as prescribed.

FINDING

Taxpayer's protest is respectfully denied.

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